

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MICHAEL NITTOLO,

Plaintiff,

V.

U.S. ATTORNEY, et al.,

Defendants.

CASE NO. 4:09 CV 2071

JUDGE JOHN R. ADAMS

MEMORANDUM OF OPINION
AND ORDER

On September 8, 2009, plaintiff *pro se* Michael Nittolo, an inmate at the Northeast Ohio Correctional Center, filed this civil rights action challenging the calculation of sentence by the Bureau of Prisons. The complaint alleges plaintiff would be released considerably sooner if BOP correctly followed the sentencing order of the trial judge. For the reasons stated below, this action is dismissed.

A district court is expressly required to dismiss any civil action filed by a prisoner seeking relief from a governmental officer or entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A; *Siller v. Dean*, No. 99-5323, 2000 WL 145167 , at *2 (6th Cir. Feb. 1, 2000).

Plaintiff is challenging the length of his incarceration as calculated by the Bureau of Prisons, asserting that the trial court's oral pronouncement estimating his amount of time served and remaining should be binding on the B.O.P. When a prisoner challenges "the very fact or duration of his physical imprisonment, ... his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 501 (1973).

Accordingly, Nittolo's complaint is dismissed under 28 U.S.C. § 1915A. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Date: November 3, 2009

/s/ John R. Adams
JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE